IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 595 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

CHANDUBHAI RAVJIBHAI CHAUDHARY

Appearance:

1. Special Civil Application No. 595 of 2002

MR ND GOHIL, AGP, for Petitioner No. 1

MRS SANGEETA N PAHWA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/09/2004

ORAL JUDGEMENT

Heard the learned advocates appearing for the parties.

2. In the present petition, the petitioner has challenged the legality of the award dated 23rd January 2001 passed by the Labour Court, Surat, by which

reference of the respondent-workman was allowed and the petitioner was directed to reinstate the respondent with backwages. It was also directed that the petitioner be placed in the minimum scale of Class IV employees.

3. Assailing the impugned award, the learned AGP Shri N.D.Gohil has submitted that in view of the Full Bench decision in the case of Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat, 2004 (2) G.L.H. 302, the Forest Department is not an "industry" and that therefore the award of the Labour Court is required to be set aside. He has also drawn my attention to the conclusions of the Full Bench wherein in answer to question No.3, it is held that the Government Resolution dated 17th October 1988 is applicable to daily-wagers of the Forest and Environment Department engaged in the work of maintenance and repairs of constructions in that department and not to the daily-wagers engaged in other types of the work in the department.

4. Appearing for the respondent-workman, Mrs.Sangita Pahwa has submitted that though the petitioner had raised preliminary objections, the question of the Forest Department not being an industry was not raised in the application Ex.18 and that therefore the petitioner is precluded from raising that contention before this Court. She also relies upon the observations of the Full Bench in the above mentioned decision to contend that whether the Department is an industry or not cannot be raised for the first time before the High Court. She also submits that the Full Bench has not held that no activity of the Forest Department can be termed as industry and the same must depend on the facts of each case and it is necessary to find out whether a particular unit fulfils the triple test before it can be decided whether the activity carried on amounts to industry or not.

5. Having considered the submissions, it can be seen that the petitioner had in the written statement, contended before the Labour Court that the Forest Department is not an industry since the activities carried on by the Department do not come within the meaning of the term "industry" as defined under the Industrial Disputes Act. Despite this specific averment, the Labour Court had proceeded with the reference and allowed the same in favour of the respondent without deciding the question whether the respondent was engaged in an industry or not. I find that the Full Bench decision in the case of Gujarat Forest Producers, Gatherers and Forest Workers Union (supra) had concluded

in answer to question No.1 to the following effect :

"Que-1 "Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?

Que-2 Whether Forest Department of the "State" is an industry or not?

Ans-(i) The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be an industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in paragraph 161 of Bangalore Water Supply case (supra), including the law falling under Articles 309 to 311 of the Constitution."

6. From the ratio laid down in the Full Bench decision, it can be seen that whether a person employed in the Forest Department is engaged in an "industry" or not will depend upon the nature of the work done by him by such unit and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, then such unit, establishment or undertaking of the Department can be said to be an "industry". I find that there is no discussion in the award of the Labour Court nor there is any material to examine whether the above test laid down by the Full Bench is satisfied in the present case. In view of the fact that the petitioner had specifically contended before the Labour Court that the respondent is not engaged in an industry, the submission of the respondent that the said contention is being taken before this Court for the first time

cannot be accepted.

7. In the result, I find that the matter is required to be remanded to the Labour Court for fresh consideration on the question whether the respondent-workman was engaged in an industry or not, which question shall have to be decided after permitting both sides to lead fresh evidence keeping in mind the observations of the Full Bench decision in the abovementioned case. The question of applicability of resolution dated 17.10.88 shall also have to be examined in view of the observations of the Full Bench.

8. In the result, the petition succeeds partly. The impugned award is set aside and the matter is remanded to the Labour Court for fresh consideration in light of the above observations. In view of the pendency of the reference since long, it is expected that the Labour Court will try to dispose of the same within a period of six months, as far as possible. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)